



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 239-00

28 April 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C.1552

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's Naval Record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Naval Reserve applied to this Board requesting, in effect, that his naval record be corrected to show that he received an uncharacterized entry level separation rather than the discharge under other than honorable conditions issued on 11 August 1988.

2. The Board, consisting of Messrs. Pfeiffer, McCulloch, and Hardbower reviewed Petitioner's allegations of error and injustice on 26 April 2000, and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that Petitioner's application to the Board was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Naval Reserve on 20 March 1987 for eight years at age 18. He was ordered to active duty 24 June 1987 for 36 months in the Active Mariner Program. Upon completion of recruit training, he was assigned to Class "A" Yeoman School, but was dropped from the course on 18 October 1987 due to a negative attitude. On 4 November 1987, he received nonjudicial punishment (NJP) for disobedience. Thereafter, he was assigned to the fleet and was advanced to SA on 7 December 1987.

d. Petitioner served without further incident until 8 July 1988 when he received a second NJP for disrespect, violation of a lawful general order, and obtaining phone services by using an AT&T card that was not his own. Punishment consisted of forfeited of \$670, 45 days of extra duty, and a reduction in rate to SR.

e. Petitioner was then notified that discharge under other than honorable conditions was being considered by reason of misconduct due to commission of a serious offense. He was advised of his procedural rights, declined to consult with counsel, and waived his right to present his case to an administrative discharge board. Thereafter, the commanding officer (CO) recommended Petitioner for discharge under other than honorable conditions by reason of misconduct due to commission of a serious offense. The CO stated that the nature of Petitioner's conduct was incompatible with the maintenance of high standards of performance, military discipline and readiness, and was destructive to the Navy's effort to instill pride and promote professionalism.

f. The Commander, Naval Military Personnel Command then directed discharge under other than honorable conditions by reason of misconduct due to commission of a serious offense. Petitioner was so discharged on 11 August 1988.

g. An uncharacterized entry level separation is authorized only to individuals who have completed 180 days or less of active service.

h. In his application, Petitioner states that he regrets the actions which led to his discharge. He has submitted letters of reference stating that he is a productive member of society and an individual of good character. He states that since his discharge he has gone back to school and is still pursuing his degree, and is now a father and husband. He has

been a correctional officer for the Michigan Department of Corrections since 1995. He asserts that the discharge he received was unjust.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. The Board initially notes that Petitioner received two NJPs in only 13 months of service, and the second NJP included an offense of moral turpitude. Although, his discharge was appropriate and proper, the Board particularly notes Petitioner's good post-service conduct and contributions to society as a corrections officer, and the regret he expressed for his actions. While the Board does not condone his infractions, his achievements and efforts to be a productive citizen during the past 12 years is mitigating and indicates that the misconduct which led to his discharge was an aberration. The Board believes that Petitioner's post-service achievements outweighs his military misconduct and to continue to show his service as under other than honorable is unjust. Petitioner does not meet the criteria for an uncharacterized entry level separation since he had more 180 days of active of service. Accordingly, the Board concludes that it would appropriate and just to recharacterize his discharge to a general discharge under honorable conditions.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued a general discharge on 11 August 1988 by reason of misconduct vice the discharge under other than honorable conditions issued on that date. This should include the issuance of a new DD Form 214.

b. That no further relief be granted.

c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

f. That upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 11 January 2000.

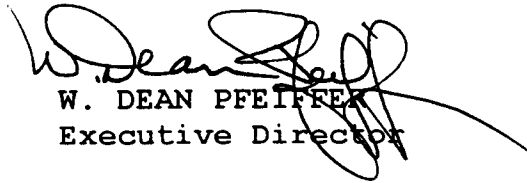
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6 (e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6 (e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director